

Document #5160

4/6/89

GRANT OF EASEMENTS

BOSTON REDEVELOPMENT AUTHORITY, a public body, politic and corporate, duly organized pursuant to Chapter 121B of the General Laws of The Commonwealth of Massachusetts, having its usual place of business in Boston, Suffolk County, Massachusetts (the "Grantor"),

in consideration of \$1.00 and other good and valuable considerations paid, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the covenants and agreements herein contained,

grants to THE NEW WILBUR THEATRE, INC., a corporation duly organized and existing under the laws of The Commonwealth of Massachusetts, and having its usual place of business c/o Donald F. Tirabassi, 106 Boylston Street, Boston, Massachusetts 02116- (the "Grantee"),

the rights and easements (the "Easements") for the purposes hereinafter set forth in and over certain portions (hereinafter more particularly described) of the land acquired by the Grantor pursuant an Order of Taking dated April 17, 1980 and recorded with the Suffolk Registry of Deeds in Book 9436, Page 12, and shown as Parcel P7a ("Parcel P7a") on a plan entitled "Boston Redevelopment Authority South Cover Urban Renewal Project No. Mass. R-92, Parcel P7a Taking Plan, Boston (Suffolk County) Massachusetts", drawn by Universal Engineering Corp., Consulting Engineers, Boston, Mass., dated May 6, 1980 and recorded with said Deeds in Book 9436, Page 12 (the "Taking Plan"). The Easements herein granted are located partly within the portion of Parcel P7a shown on the Taking Plan as Dore Street, said Dore Street having been discontinued as a public way by Order of the Public Improvement Commission of the City of Boston dated July 3, 1980 and recorded with said Deeds in Book 9475, Page 98, the plan referred to in said Order being recorded with said Deeds in Book 9479, Page End, and partly within the portion of Parcel P7a between the northerly line at the former Dore Street and the present southerly line of Stuart Street). The Easements herein granted to the Grantee are to be held as appurtenant to the parcel shown on the plan entitled "Subdivision Plan, Boston, Mass.", drawn by Harry R. Feldman, Inc., dated April 7, 1981 and recorded with said Deeds in Book 9804, Page 631 (the "Wilbur Theatre Plan") as "Wilbur Theatre" (the "Wilbur Theatre Parcel") which the Grantee is about to acquire from Richard E. Bader and Charles Parker, Trustees of Wilbur Theatre Trust, by a deed to be recorded contemporaneously herewith. The Wilbur Theatre Parcel is more particularly bounded and described according to the Wilbur Theatre Plan, as follows:

A certain parcel of land, together with the building and other improvements thereon, situated on the Southeasterly side of Tremont Street in Boston, Suffolk County, Massachusetts, bounded and described as follows:

Beginning at the Northwesterly corner thereof at the intersection of said Tremont Street and Dore Street (being a portion of the land included in Parcel P7a), thence running

S 82° 01' 36" E	by said Dore Street, 126.45 feet to a point at land shown as Boston Music Hall; thence turning and running
S 19° 04' 48" W	by said land shown as Boston Music Hall, 104.67 feet to a point; thence turning and running
N 76° 34' 23" W	still by said land shown as Boston Music Hall, 30.03 feet to a point; thence turning and running
N 12° 00' 32" E	still by said land shown as Boston Music Hall, 21.66 feet to a point; thence turning and - running
N 83° 23' 39" W	still by said land shown as Boston Music Hall, 42.92 feet to a point; thence turning and running
N 79° 31' 12" W	still by said land shown as Boston Music Hall, 39.72 feet to a point on the Southeasterly side of said Tremont Street; thence turning and running
N 11° 25' 03" E	by said Tremont Street 77.67 feet to the point of beginning.

The Easements hereby granted consist of the following rights and easements:

A. STREET LEVEL ACCESS AND EGRESS

The right of pedestrian access and egress to and from Tremont Street to the Wilbur Theatre Parcel through the existing doorways along the Northerly wall of the building located thereon (the "Wilbur Theatre") within an eight (8) foot wide portion of Parcel P7a immediately adjacent to the Wilbur Theatre Parcel. Such rights are intended to provide general access and egress to and from the lower level of the Wilbur Theatre and to provide emergency egress and general rights of egress following performances at the Wilbur Theatre.

B. EMERGENCY EGRESS

The right to use the existing fire escapes, and replacements thereof, on the said Northerly wall of the Wilbur Theatre extending approximately four (4) feet

into Parcel P7a, together with the right to use the eight (8) foot wide portion of Parcel P7a described in paragraph A above for emergency egress from the Wilbur Theatre to Tremont Street.

C. STAGE DOOR ACCESS

The right to enter upon the portion of Parcel P7a which is within twenty (20) feet of the Northerly wall of the Wilbur Theatre, with so-called tractor trailer trucks and other motor vehicles, from Tremont Street to the stage doors at the Northeasterly corner of the Wilbur Theatre and to park such vehicles temporarily to allow the loading and unloading of scenery and all other equipment and materials customarily used for the presentation of "live stage performances." All of such scenery, equipment, and materials may be temporarily placed within said portion of Parcel P7a during the process of delivering the same to the Wilbur Theatre and during the process of removing the same from the Wilbur Theatre.

D. UNDERGROUND UTILITY AND AREAWAY EASEMENTS

The perpetual right and easements to inspect, repair, replace, reconstruct, maintain and operate, for the transmission of water, storm water, sewerage, natural gas, telecommunications, steam, and high and low voltage electric current, all of the existing underground utility distribution systems consisting of pipes, conduits, buried cables or cables within conduits, and all appurtenances thereto consisting of manholes, vaults, handholes, transformers, switching systems, valves, and all other equipment relating thereto, in and under the portion of Parcel P7a shown as Dore Street on the Parcel P7a Plan, and in and under a portion of Parcel P7a which is twenty (20) feet wide, centered on the present or any future location of a sewer line from the Wilbur Theatre Parcel to Stuart Street, which location is to be established by the recording with said Deeds of a plan delineating the same; and the right to use the "Areaway" located under the sidewalk of Dore Street adjacent to the Northerly wall of the Wilbur Theatre for all of the foregoing purposes and for all other purposes for which the same has been used in connection with the operation of the Wilbur Theatre, including the kitchen facilities and storage areas in the lower level of the building. Also, the right and easement to pass and repass over, across, and upon said Dore Street and the said twenty (20) foot wide sewer easement in order to renew, replace, repair, remove, maintain, operate and otherwise service each of the aforesaid utility lines and the aforesaid Areaway, and to make such excavations as may be reasonably necessary

for such purposes; provided, however, that any such excavations as permitted herein shall be properly backfilled and the surface of the land included within the said portion of Parcel P7a, as said surface may be repaired or replaced by the Grantor or its successors and assigns in connection with the development of Parcel P7a, shall be restored to as reasonably good condition as said surface was in immediately prior to such excavations.

E. CONSTRUCTION AND MAINTENANCE EASEMENTS

The right to use the portion of Parcel P7a within twelve (12) feet of the Northerly wall of the Wilbur Theatre for the purpose of inspecting, repairing, maintaining and replacing the roof of the Wilbur Theatre, said Northerly wall, the doorways and other openings therein and all fire escapes, balconies, steel beams, ladders, and light fixtures connected to or suspended therefrom, and the cornice extending from Tremont Street along said Northerly wall, including the right to temporarily, from time to time, place equipment, supplies and staging therein for such purposes.

Notwithstanding anything to the contrary contained herein, the Easements herein granted are granted subject to the following conditions and provisions:

1. All installations relating to existing utilities made by the Grantee shall be entirely at or below the surface of the ground.

2. With the exception of the conduits, pipes, wires, cables, and all other appurtenances thereto, which form a part of any of the underground utility distribution systems, the rights and easements granted hereby are non-exclusive and shall be exercisable in common with others lawfully entitled thereto from time to time, but the Grantee shall not be required to remove any structures or facilities located within Parcel P7a and the Grantor shall have the right to remove such structures or facilities only if the same are replaced in accordance with paragraph 4 below. The Grantor expressly reserves and retains the right to use, or to grant to others the right to use, the surface and subsurface of, and the air space above, the areas subject to the rights and easements hereinabove granted, provided only that such use by the Grantor or others shall not materially and adversely jeopardize or interfere with the exercise by the Grantee of the rights and easements herein granted. If, however, interference with the Grantee's rights and easements is caused by the addition of other easement holders or by the development of Parcel P7a by the Grantor or its successors and assigns, then the responsibility for

providing alternate rights and easements for the benefit of the Wilbur Theatre Parcel comparable to those granted herein shall be borne by the party causing such interference.

3. All work performed by the Grantee shall be performed with a minimum of interference with the Grantor's present or future use of the portions of Parcel P7a that are subject to the Easements herein granted. The exercise of the Easements by the Grantee shall be at the sole cost and risk of the Grantee and the Grantor shall have no responsibility or liability except for its own negligence and the negligence of its agents and servants.

4. The Grantor specifically reserves the right to construct a building and other improvements within those portions of Parcel P7a which are subject to the Easements herein granted to the Grantee, upon the following terms and conditions:

- a. Buildings or portions of buildings may be constructed immediately adjacent to the Northerly wall of the Wilbur Theatre so long as there is provided comparable rights of access and egress to and from all of the ground level doors, upper level doors and the stage door as is herein granted. Vehicular access to the stage door area, with a minimum height of twelve (12) feet, may be provided from Stuart Street or from Washington Street through adjacent parcels. Ground level access and egress and upper level emergency egress may be provided by the construction of stairways or such other means as will allow for unimpeded access and egress to and from Tremont Street, all in accordance with applicable building and zoning code requirements. Underground utility easements may be provided from Tremont Street, Stuart Street or Washington Street.
- b. The construction of alternate means of access and egress, both for pedestrians and vehicles, and the construction of alternate or substitute underground utilities shall be done in such a manner as not to interfere with the normal day-to-day operation of the Wilbur Theatre and each and all of the facilities located therein without the express written consent of the Grantee.
- c. The Grantor agrees to provide information as to proposed development of Parcel P7a with specific information relating to the relocation or substitution of any of the Easements herein granted. Comments or objections to any such plans may be made by the Grantee within thirty (30) days of the receipt of such plans, but the Grantor shall have the absolute right to make an independent determination, notwithstanding any comments or objections by the Grantee, regarding the substitution or relocation of the Easements herein established. The right of the Grantor to make the final determination

regarding such substitution or relocation of the Easements shall not relieve the Grantor of the obligation to provide comparable Easements for the Wilbur Theatre Parcel.

- d. The Easements herein created shall be terminated and superseded upon the recording of a clear and unencumbered Grant of Easement for such purposes, in form and substance reasonably satisfactory to the Grantee.

4. The rights and obligations herein established are binding upon the Grantor and the Grantee and their respective successors and assigns, during the period of ownership of Parcel P7a and the Wilbur Theatre Parcel, respectively.

5. Nothing contained herein is intended to, nor shall be deemed to, establish the portion of Parcel P7a shown as Dore Street on the Taking Plan as a public or private way. The Easements are granted solely for the benefit of the Grantee, its agents, servants, licensees, tenants, invitees, successors and assigns, and as appurtenant rights to the Wilbur Theatre Parcel.

EXECUTED AS A SEALED INSTRUMENT this ____ day of March, 1989.

BOSTON REDEVELOPMENT AUTHORITY

By: _____
Stephen Coyle
its Director
hereunto duly authorized

THE NEW WILBUR THEATRE, INC.

By: _____
Myrna J. Merowitz
its President and Treasurer
hereunto duly authorized

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

March __, 1989

Then personally appeared the above-named Stephen Coyle, Director of the Boston Redevelopment Authority, and acknowledged the foregoing instrument to be the free act and deed of said Authority, before me.

Notary Public

My commission expires:

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

March __, 1989

Then personally appeared the above-named Myrna J. Merowitz, President and Treasurer of The New Wilbur Theatre, Inc. and acknowledged the foregoing instrument to be the free act and deed of said Authority, before me.

Notary Public

My commission expires:

MEMORANDUM

5160
APRIL 6, 1989

TO: BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

FROM: KRISTEN MCCORMACK, DIRECTOR, MIDTOWN CULTURAL DISTRICT
WILLIAM D. WHITNEY, ASSISTANT DIRECTOR

SUBJECT: EASEMENTS FOR THE REHABILITATION AND USE OF THE WILBUR
THEATRE - AUTHORIZATION TO EXECUTE, ACKNOWLEDGE AND
DELIVER THE ATTACHED GRANT OF EASEMENTS TO THE NEW
WILBUR THEATRE, INC.

SUMMARY: This memorandum requests authority for the Director to execute a Grant of Easements, in substantially the form attached hereto, in order to establish recorded rights in certain portions of Parcel P-7a (South Cove Urban Renewal Area, Mass. R-92) primarily within the former location of Dore Street and extending to Stuart Street for limited purposes. The New Wilbur Theatre, Inc. is under agreement to purchase the Wilbur Theatre property which is to be renovated and developed to include, among other things, a 699-seat "Off-Broadway" theatre.

The Wilbur Theatre is located at 244-248 Tremont Street, bounded northerly by land which was formerly included in Dore Street. The Wilbur is approximately seventy-five years old and has been designated by the Boston Landmarks Commission as being historically significant with respect to certain interior and exterior features. The only current use of the property is for the Averof Restaurant in the lower level.

The New Wilbur Theatre, Inc. is presently under agreement to purchase the property and to renovate it to house, among other things, a 699-seat "Off-Broadway" theatre. In the course of the title examination and survey required for the acquisition and financing of the property, it was discovered that Dore Street had been discontinued as a public way and had been taken by the BRA as part of Parcel P7a. Rights had not been reserved in the taking by the BRA to allow continued use of portions of Dore Street for street level access and egress, emergency egress, stage door access, underground utility easements, and construction and maintenance easements for the benefit of the Wilbur Theatre property. So long as Dore Street was a public way, there was no problem concerning any of the foregoing uses for the Wilbur Theatre. Since Dore Street has been discontinued as a public way by Order of the Public Improvements Commission of the City of Boston, and since the fee ownership of Dore Street has been acquired by the BRA, it is now necessary to establish formal legal rights for the Wilbur Theatre. In addition, it

appears that the sewer which formerly extended to Washington Street has been relocated across Parcel P7a to connect to Stuart Street. An easement for the sewer is also required. Such rights are typically required by experienced counsel for a purchaser and by institutional lenders and their counsel. A list (furnished to us by counsel for The New Wilbur Theatre, Inc.) entitled "Documents and Plans Related to Dore Street" contains a brief summary of the more current history of Dore Street and the adjacent property. The attached plan shows the configuration of the Wilbur Theatre property and the surrounding property. The Wang Center has been extended in a northerly direction across the easterly end of Dore Street to Stuart Street. There is an enclosed lower level passageway from the area between the rear of the Wilbur Theatre and the Wang Center which leads to Stuart Street for emergency egress.

Although it is not now known why these matters were not addressed in 1981 when the Wilbur Theatre was sold by New England Medical Center, Inc. (see Item 31 on the above-referenced list), it is now desirable to formally establish the rights necessary for the operation of the Wilbur Theatre. Mr. Robert S. Merowitz is one of the principals involved in this project. As is known by many of the members of the BRA and the staff, Mr. Merowitz has played an important role in the revitalization of the Downtown Theatre District. There is the utmost confidence that the plans proposed by Mr. Merowitz will result in the continued enhancement of the Theatre District and that, with his guidance, the Wilbur Theatre will regain much of its former glory. Those plans can only be implemented and brought to completion if the BRA approves the request for easements contained in the attached Grant of Easements.

Members of the staff informed Stephen C. Flashenberg, one of the attorneys for The New Wilbur Theatre, Inc., of the need to retain maximum flexibility for the development of Parcel P7a. Mr. Flashenberg has prepared the Grant of Easements so that the BRA will have all of the development rights which are required for Parcel P7a, while at the same time ensuring the continued operation of the Wilbur Theatre. Accordingly, it is strongly recommended that favorable action be taken on this matter as soon as possible so that the purchase of the Wilbur Theatre by The New Wilbur Theatre, Inc. can be completed in a timely fashion. An appropriate vote follows:

VOTED: That the Director is hereby authorized to execute a Grant of Easements in substantially the form attached hereto relating to portions of Parcel 7a at the corner of Tremont Street and Stuart Street in the South Cove Urban Renewal Area, Mass. R-92, with such modifications and changes as the Director deems appropriate and in the best interest of the Authority, said non-exclusionary easements are necessary for the rehabilitation and re-use of the Wilbur Theatre property located at 244-248 Tremont Street, Boston, Massachusetts.

